

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RODRIGO HERNANDEZ-SANCHEZ,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C19-5840 RJB
CR17-5384 RJB

ORDER TRANSFERRING MOTION

This matter comes before the Court on Petitioner's September 6, 2019 Motion under 28

U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody.

Hernandez-Sanchez v. United States, Western District of Washington Case Number 19-5840,

Dkt. 1, and in *United States v. Hernandez-Sanchez*, Western District of Washington Case

Number 17-cr-5384 RJB Dkt. 103. The Court has reviewed the relevant documents and the

name in order of the file being read.

remainder of the file herein.

On September 6, 2019, Petitioner filed the instant motion, challenging the validity of his

sentence under 28 U.S.C. § 2255, arguing that he received ineffective assistance of counsel. *Id.*

1 Petitioner received the 84-month sentence on January 25, 2019, which was imposed after his
2 guilty plea to conspiracy to distribute controlled substances in violation of 21 U.S.C. § 841 (a)(1)
3 and to illegal reentry after deportation in violation of 8 U.S.C. § 853. *United States v.*
4 *Hernandez-Sanchez*, Western District of Washington Case Number 17-cr-5384 RJB, Dkt. 91.

5 This is Petitioner's third § 2255 motion. On July 8, 2019, Petitioner filed a motion,
6 challenging the validity of his sentence under 28 U.S.C. § 2255, arguing that he received
7 ineffective assistance of counsel because of counsel's failure to help him pursue a reduced
8 sentence through the safety valve provision found at 18 U.S.C. 3553(F). *Hernandez-Sanchez v.*
9 *United States*, Western District of Washington Case Number 19-5643 RJB, Dkt. 1; and in *United*
10 *States v. Hernandez-Sanchez*, Western District of Washington Case Number 17-cr-5384 RJB,
11 Dkt. 99. This motion was transferred to the Ninth Circuit Court of Appeals as a second or
12 successive petition. *Hernandez-Sanchez v. United States*, Western District of Washington Case
13 Number 19-5643 RJB, Dkt. 3; and in *United States v. Hernandez-Sanchez*, Western District of
14 Washington Case Number 17-cr-5384 RJB, Dkt. 100.

15 In his first § 2255 motion, he claimed that his Sixth Amendment right to effective
16 assistance of counsel was violated when counsel: (1) failed to follow certain strategies and argue
17 several Fourth Amendment violations in the motion to suppress, including: that the warrant did
18 not comply with Rule 41, the warrant was not supported by probable cause, his arrest was
19 improper because the search was not, that the Petitioner suffered a “*Payton [v. New York*, 445
20 U.S. 573 (1980)]” violation, and suffered a *de facto arrest* and (2) failed to communicate with
21 the Petitioner with due diligence, while referencing the “language barrier.” *Hernandez-Sanchez*
22 *v. United States*, Western District of Washington case 19-5105 RJB, Dkt. 1; and filed in *United*
23 *States v. Hernandez-Sanchez*, Western District of Washington Case Number 17-cr-5384 RJB,
24

1 Dkt. 96. His motion was denied. *Hernandez-Sanchez v. United States*, Western District of
2 Washington case 19-5105 RJB, Dkt. 7; and filed in *United States v. Hernandez-Sanchez*,
3 Western District of Washington Case Number 17-cr-5384 RJB, Dkt. 98. Petitioner appealed that
4 decision. *Hernandez-Sanchez v. United States*, Western District of Washington case 19-5105
5 RJB, Dkt. 10.

6 Any prisoner seeking to file a successive motion must first file, in the appropriate court of
7 appeals, a motion for an order authorizing the district court to consider the successive
8 application. 28 U.S.C. § 2255; 28 U.S.C. § 2244(b)(3)(A).

9 Because Petitioner has previously filed at least one 28 U.S.C. § 2255 motion, the instant
10 motion is a second or successive one. Accordingly, this Court is without jurisdiction to consider
11 Petitioner's motion until the Ninth Circuit Court of Appeals has authorized its filing. Thus,
12 Petitioner's motion is not properly before this Court.

13 Therefore, this case is hereby:

14 **TRANSFERRED** to the Ninth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631
15 and Ninth Circuit Rule 22-3. Petitioner is advised that this transfer does not of itself constitute
16 compliance with § 2244(b)(3)(A) and Ninth Circuit Rule 22-3. Petitioner must still file a motion
17 for leave to proceed in the Court of Appeals and make the showing required by § 2255(h).

18 The Clerk is directed to close this case and to transfer all original documents to the Ninth
19 Circuit Court of Appeals. The Clerk shall, however, retain a copy of the motion and of this
20 Order in the file. The Clerk is further directed to send a copy of this Order to all counsel of
21 record and to any party appearing *pro se* at said party's last known address.

22

23

24

Dated this 10th day of September, 2019.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge